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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,329

04/02/2004

Gary M. Saxton

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1143

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07/11/2007

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EXAMINER

NGUYEN, TUAN DUC

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

07/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/817,329

Applicant(s)

SAXTON ET AL.

Examiner

Tuan D. Nguyen

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10-20, 23-28, 30-32, 35-52, 55-62, 64-66 and 71-75 is/are pending in the application.
- 4a) Of the above claim(s) 14, 30, 31, 49-51, 52, and 62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-20, 23-28, 32, 35-48, 55-62, 64-66 and 71-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/13/04, 2/7/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species 1: Figures 1-3, claims 1-5, 7, 8, 10-20, 23-28, 30-32, 35-52, 55-62, 64-66, and 71-75 in the reply filed on 05/21/2007 is acknowledged. Claims 14, 49-52, and 62 do not read on figures 1-3. Hence, claims 14, 49-51, 52, and 62 are not considered on the merit. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Objections

2. Claims 30 and 31 are objected because they are depending on cancelled claim 29. Therefore, claims 30 and 31 are not considered on the merit.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 7, 8, 10-13, 15-20, 26-28, 32, 40, 41, 44-48, 55-61, 64-66 and 71-75 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent number 6,135,235 (Brimhall).

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Regarding claims 1-4, 7, 8, 10, 26, 32, 40, 41, 44-48, 55-58, 71, 72 Brimhall discloses a self-expanding hearing device (figures 2-11B) comprising: a body; a membrane (68, 88) coupled to said body; and a frame (44, 64, 84) coupled to said body, said frame being adapted to deploy from a compressed state to a deployed state when warmed above a material activation temperature of the frame (column 3-column 8).

Regarding claims 5, 11-13, 16-20, 26, 27, 35 and 59-61, 73-75 Brimhall also discloses supports are elastic, superelastic material (Nitinol), metal, and a shape memory material (column 5 lines 1-9).

Regarding claims 28, 30, 31 and 75, Brimhall further discloses a material activation temperature between 20degree C and 40 degree C (column 5 lines 1-9).

Regarding claim 15, Brimhall also discloses wherein supports are springs (44, 44', 64, 84).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 23-25, 36-39, 42, 43, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent number 6,135,235 (Brimhall)

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7. Regarding claims 23-25, 36-39, 42, 43, and 45, Brimhall does not disclose the specific dimension of supports and the membrane.

However, Brimhall does not restrict to a particular dimension.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the dimension by Brimhall for particular users' ears.

Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan D. Nguyen whose telephone number is (571) 272-8163. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TDN
7/3/07


CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
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